

**PERFORMANCE STANDARDS
&
BILLING GUIDELINES**

**STATE CONTRACT
PROPERTY & CASUALTY
CLAIMS ADJUSTERS**

DEPARTMENT OF ADMINISTRATION
Risk Management & Tort Defense Division

November 5, 2001

Insurance Tort Claims Loss Control

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PREFACE

The accompanying standards for property and liability claims management have been developed by the Risk Management & Tort Defense Division for contract adjusters and represent generally accepted claims principles and best practices.

These standards are copy righted work of the Risk Management & Tort Defense Division, State of Montana, and Michael Craig Patterson, Patterson Management Group, and may not be duplicated, sold, distributed, lent, revealed, transmitted, or stored in any form or through any device.

The standards are reasonably necessary for the Risk Management & Tort Defense Division to establish and enforce performance guidelines for claims service organizations and personnel providing or proposing to provide claims administration services on behalf of the State of Montana.

Performance and Billing Guidelines For Contract Adjusters FY 2002

I. Statement of Purpose

The following claims administration performance standards have been adopted by the Risk Management & Tort Defense Division (RMTD). They represent the division's basic expectations with respect to conduct by claims organizations and other personnel who are charged with evaluating and adjusting the state's general liability, vehicle liability, and property claims. It is partially against these standards that the performance of contract adjusters will be evaluated.

It is not the intent of the division to deter claims personnel from exercising creative approaches to claims evaluation and from responding with skill and judgment depending upon unique circumstances specific to each claim. These standards are not a substitute for judgment. They reflect the context within which claims personnel will exercise judgment. While some of these standards may exceed commonly found claims approaches, they are, in the opinion of RMTD indicative of reasonable claims management techniques.

II. Mission Statement

The mission of the Risk Management & Tort Defense Division of the Department of Administration is to provide cost-effective and comprehensive insurance coverage and risk management services, and to protect and defend the State of Montana and its agencies against losses stemming from property and casualty claims.

The division receives approximately 1,400 claims each year and they are broken down as follows: 500 vehicle liability, 800 general liabilities, and 100 property claims. Timely and accurate evaluation of claims is vital in protecting the state's assets and preventing litigation.

The division presently employs three claims personnel (two claims specialists, and a senior claims specialist) whose primary responsibilities are to evaluate claims. In some cases, claims are evaluated from start to finish by division staff. Another way of evaluating claims is for division staff to utilize contract adjusters to conduct accident investigations, interview witnesses, and on occasion to negotiate settlements.

Adjusters may also be utilized to evaluate claims from start to finish. Because the State of Montana has very high tort

damage caps and is often viewed as a deep pocket, the division

maintains a very stringent philosophy on settling claims.

The division's primary claims objective is to investigate, identify, and resolve as quickly as possible, claims and legal cases that have merit. The division prepares the remaining cases for summary judgment or final resolution at trial consistent with ethical and legal obligations and the need to establish acceptable, cost-effective claims precedents.

III. Assignment of Claims

Claims will be assigned to contract adjusters on an as-needed basis and depending on internal workload. Claims may be assigned via fax, telephone, or the US Postal Service. When claims are assigned by telephone, pertinent information related to the claim will be faxed or mailed to the adjuster as soon as it is available. RMTD may request that a specific adjuster work on a claim.

When an assignment is received, it should be reviewed as soon as possible. If something is not clear, or questions arise during this review, Risk Management & Tort Defense should be contacted to clear the matter up as soon as possible. If there is a conflict of interest for some reason, RMTD should be notified immediately so another adjuster can be chosen.

Claims are assigned to contract adjusters based upon proximity to the work, specific expertise, workload, and charges assessed to the state. All assigned claims are expected to be investigated, regardless of the amount requested. Risk Management & Tort Defense evaluates every claim to determine if the state is responsible for the damages. Claims are not paid for any reason other than the state was liable for the damages, or because it was a covered loss.

At the time of assignment, or as soon as practical thereafter, the adjuster will be provided with the claimant's name, address, phone number, the claim number, the date of the loss, the state employee contact name, agency and phone number, and all pertinent information in our possession related to the claim.

IV. Correspondence

Upon assignment of a claim, the name of a contact person

within the division will also be provided.

All correspondence from adjusters to RMTD should be sent to the contact person and include, above the salutation, the following information: claimant name, claim number and date of loss. All correspondence should be typed or legibly hand written. Any photocopied information must be legible and complete (all headings, footings, etc. must be included).

All relevant supporting documentation should be included with the report. This includes items indicated by the type of claim such as police reports, climatological reports, copies of state policies and procedures obtained during the investigation, copies of bills, maps, diagrams, and medical record narratives.

Risk Management & Tort Defense personnel will follow these same guidelines in their correspondence with contract adjusters. Claims correspondence will be organized in an orderly and secure fashion and sent to the Risk Management & Tort Defense Division. Claims files and their contents are the property of the State of Montana and as such will be kept and maintained by the division.

V. Payment of Fees and Expenses

It is the policy of the division to retain contract adjusters with the requisite knowledge and ability to render a complete and thorough evaluation of claims in a cost effective manner.

Payment will be made to adjusters in accordance with the terms of the contract entered into with RMTD. Adjusters are encouraged to organize work insofar as reasonably possible, in such a manner as to assure that claims are adjusted in the most cost effective manner. All costs incurred by the adjusters must be reasonable and necessary. As a government agency expending funds from the public treasury, RMTD expects contract adjusters to incur expenses in a financially conservative way.

Each adjuster or firm will submit an itemized statement to RMTD monthly indicating specific charges, a description of each charge, and the dollar amount. Adjusters used on an occasional basis may submit their statements at the close of the claim, and will usually be paid within two weeks of submission of the statement. Mileage reimbursement for travel is established in the contract.

The Risk Management and Tort Defense Division are funded on a July 1 to June 30 fiscal year basis. Invoices for services rendered through June 30 of the current year must be received by RMTD no later than July 9 of the same current year. Please send monthly statements to:

Risk Management & Tort Defense Division
Department of Administration
P.O. Box 200124
Helena, MT 59620-0124

VI. Claims Investigation

Extent

The nature and extent of investigations is to be governed by the degree and type of exposure presented by each claim and based upon the direction given by the claim contact in the initial assignment. Both financial and non-financial factors are to be considered. They include potential settlement and jury values, the nature and seriousness of damages, public relations impact, and public policy considerations. RMTD expects cases to be evaluated sufficiently to assess degrees of comparative negligence and sufficient to evaluate cases for early settlement to preclude litigation.

Timing

Investigations are to be initiated immediately upon the adjuster's receipt of a claim. Whenever possible, inspections are to be conducted prior to repair. If either or both vehicles have been repaired, copies of repair bills should be obtained and analyzed.

Inspections

Ordinarily, adjusters will be asked to obtain the facts, ascertain liability, and establish damages when assigned a claim. In some instances, adjusters will be asked to obtain releases and take care of subrogation and auto salvage requirements.

Structures and equipment are to be inspected and photographed as soon as possible after receipt of a claim. Any old damage should be noted on both state and claimant vehicles. Whenever understanding of damages would be improved, diagrams with measurements should accompany the photographs. Inspections should be conducted with due consideration as to whether all damage is consistent with the allegations contained within the claim.

Loss scenes are to be examined as soon as possible following receipt of claim. Scene diagrams should be executed whenever they are necessary to convey factual, liability, and damage information. Photography and diagramming should be consistent with the guidelines contained herein.

Photographs

Photographs are valuable only to the extent that they clarify what happened and that they are taken with due consideration to issues of admissibility. Photographs shall be taken for all BI or PD claims with an estimated value in excess of \$500. Photographs taken by adjusting and investigation personnel must be placed in logical order and a descriptive narrative

provided. Photographs not mounted should be numbered and explained on the back of each picture.

Lens angles and heights are not to be arbitrary. Whenever possible, they should be consistent with the position and height of accident participants or witnesses. Multiple sets of photographs may help to clarify the plausibility of individual versions of how an accident happened and, if taken with due regard to issues of admissibility, may assist defense counsel during litigation.

Sequential photography should be considered whenever an understanding of facts and circumstances is aided by showing what a participant or a witness would have seen as he/she approached the scene. All photographs are to be mounted and labeled to include the date, time, name of claim, date of loss, type of camera, location, direction, description of contents, and name of photographer.

Negatives are to be sent to the claim contact.

Diagrams

Diagrams should be carefully labeled to include the date drawn and identification of the investigator and illustrator. They should be drawn to scale where feasible. Diagrams should clearly show the location of each participant and witness. Multiple diagrams may be used to show movement of participants, witnesses, etc. All impediments or aids to visibility or hearing should be included. These would include bushes, fences, buildings, posts, poles, and parked or moving cars.

Statements

Statements may either be recorded or handwritten and signed. Refusals to provide statements should be documented. Tapes with recorded statements shall be sent to the claim contact. The investigator or adjuster is expected to plan statements prior to taking them in order to make certain that all issues relevant to an understanding or assessment of facts, damages, and liability are explored. While statements should proceed along organizational lines, the adjuster is expected to recognize and follow-up on unanticipated comments which may arise.

All recorded statements are to include an acknowledgement by the person giving the statement that he or she understands that the conversation is being recorded and gives consent. Include within all statements the full name, residence, business address, telephone number, birth date, social security number, driver license number, and occupation of the person giving the statement.

Witness Evaluations

Witness evaluations should be prepared following meetings with participants and witnesses. Witness evaluations should be on separate sheets of paper and are to include the name, address, age, physical description, investigator's impression of demeanor and effectiveness as a witness, and the presence of any special mannerisms, which, in the investigator's opinion, may have an impact on the jury.

Consistent with state law, inquiries to Motor Vehicle Records should be made to obtain information regarding vehicle ownership and driver histories. Information received may alert the adjuster to an otherwise unknown prior or subsequent accident that may have produced injuries which have a bearing on the present claim.

Medical, Wage Loss, and/or School Attendance Verifications

These are to be solicited from claimants in all bodily injury claims. It is contrary to RMTD performance standards for the adjuster to wait passively for claimants to submit medical bills and reports on their own time schedule without having requested a signed authorization.

Because the advantages of aggressive, pro-active, claims management outweigh the costs of obtaining most documentation, RMTD authorizes the adjuster to obtain medical and wage loss information directly from the provider and include it within monthly billing submissions as a reimbursable cost.

Verification of Damages

The adjuster is expected to verify that damages have actually been sustained and that the dimensions of the property damage or bodily injury are as alleged. If inspection is impractical or if the property has already been repaired, photographs may be accepted along with the original or clear photocopies of itemized repair invoices.

If fraud is expected, the adjuster is expected to communicate immediately with his/her contact person. For property damage claims, competitive bids are to be obtained and carefully reviewed and compared with documentation and photographs. Care must be exercised when reviewing billings for property already repaired to assure that payment is not being made for damages unrelated to the claim at hand. Proposed and completed repair bills must be examined carefully to assure that overlap is not present.

Estimates and repair bills must be itemized and detailed. Absent compelling circumstances, payment is not to be made on the basis of lump sum billings. For all claims, the adjuster

must confirm totals by running a tape on a calculator and providing those to the claim contact. Care must be taken not to add in subtotal figures.

Medical billings, especially for continuing and frequent services such as physical therapy and chiropractic care, are to be examined carefully to identify and discount duplicate charges. When credit is to be taken for collateral payments by other parties, care must be taken to confirm the amount of prior payments.

Claims professionals are expected to explore the impact that particular injuries have on the claimant's body and functioning. Evaluation of damages on the primary basis of dollar totals for medical treatment and wage loss is unacceptable. The issue of injury impact is to be reviewed with treating physicians and adjusters are expected to have familiarity with anatomy and common traumatic injuries and to maintain and consult medical, pharmacological, and anatomical authorities or references.

Vendor Payments

For damage to state-owned or leased/loaned property, RMTD pays all vendors directly rather than reimbursing the state agency (exceptions approved by the claim contact). For replaced items, the agencies should be advised to have the vendors bill us directly at the address shown in the Payment of Fees and Expenses section of these guidelines.

Theft and Mysterious Disappearances - Special Considerations

Theft - The property policy will pay for theft, but not for mysterious disappearances. The adjuster shall work with the claim contact to determine if it is really a theft, or if it is a mysterious disappearance based upon the state's policy.

If there was an actual theft, make sure to obtain the applicable police report to submit to RMTD. It should also be determined if any of the stolen property has been recovered. If none has, the agency should be advised that should any of the equipment be recovered in the future, they are to notify RMTD immediately.

Vehicle Liability - Special Issues

If the state was negligent, the adjuster will be expected to assess the amount of damage (to include depreciation) to the claimant vehicle and determine if the vehicle is repairable or totaled. The adjuster is expected to perform an appraisal or require two written estimates of damage and work with body shops or windshield shops regarding the acceptability of the estimates.

If the vehicle is totaled, the adjuster should determine the actual cash value of the vehicle and advise RMTD. The adjuster will usually be involved in negotiating the settlement of the vehicle damage, including obtaining a property damage release, and taking care of the salvage of the vehicle. All vehicle settlements with claimants must be cleared by RMTD before finalizing it with the claimant.

If the liability of the state is clear, and a rental car is needed, the rental car arrangements must first be reviewed and approved by RMTD. RMTD will look for reasonableness in the length of time for which the car is requested and in the rate being charged.

Bodily Injury - Special Considerations

The adjuster will be responsible for informing RMTD of the nature and extent of the recovery. Settlement negotiations for bodily injury portion of claims may be handled internally or assigned to an adjuster at the discretion of division claims staff.

VII. Claims Controls

Section 2-9-301, Montana Code Annotated, states that a claimant must make a claim to the department in writing, and that the department must grant or deny a claim in writing within 120 days after the claim is presented to the department. This law should not be used to delay the constructive, energetic response to the claim.

The Risk Management & Tort Defense Division views the following claims controls as essential for developing a working relationship of trust between the adjuster and claimant. As such, compliance by the adjuster with these performance elements is required in order to reduce unnecessary costs of litigation and to expedite case resolution.

Claimant Contact

The adjuster will attempt to contact the claimant within 48 hours following receipt of a claim. If daytime attempts are unsuccessful, evening attempts prior to 8:00 p.m. will be made. If contact has not been made within 48 hours, a letter will be sent to the claimant the same day and will request telephone contact by those individuals. Each attempt to contact will be documented in the claim file.

The adjuster will assure that the claim is thoroughly evaluated and will indicate when the claimant will next be contacted. The adjuster will promptly return all phone calls, keep appointments, and follow through in a timely manner with commitments, which he or she has made.

Personal contact supplementing telephone and written

communications with claimants in order to enhance the fact-finding and negotiation processes and to expedite case resolution without protracted litigation.

Claim denials will not be made without adequate justification, which is based upon objectively, executed investigations. The adjuster will refrain from jeopardizing case resolution through making settlement offers, which bear no reasonable relationship to actual damages.

Reports and Deadlines

Within 10 business days of assignment of the claim, contract adjusters should provide to the division an initial evaluation report which acknowledges assignment and provides an initial evaluation of the claim, what steps have been taken toward completion of the assignment and what steps are planned to reach completion of the assignment. This report should contain claim identifying names and numbers.

The initial report should include a complete description of the loss. If it was a property loss, exactly which buildings were damaged and how extensively, if there was a collision how many cars were involved, who was driving each one and the extent of the property damage and bodily injury, etc. Include which state employees were contacted and when.

In cases where there are fatalities, serious accidents or serious property damage, an initial report should be received by RMTD within 24 hours. Status reports should be received either in writing or by phone every 30 business days until the closure of the claim.

When possible, a final report on a claim should be received by RMTD within 30 business days of the date of assignment. The final report should explain the recommended disposition of the claim and include a solid basis and appropriate documentation to support this recommendation. Deviation from the thirty days would be the exception, not the rule. Copies of all agreed upon damage estimates and/or claimant bills should be attached. When the final report is received by

RMTD, we should have a clear picture of the claim and be able to resolve the claim from the information presented by the adjuster.

VIII. Litigation Management

Litigation management is the responsibility of the Chief Defense Counsel, Risk Management and Tort Defense Division. All claims where attorney representation is involved should be referred to the claim contact, for referral to the Chief Defense Counsel.

The claims adjuster will comply with all requests from division counsel to provide assistance during discovery, additional investigation, reserve analysis and adjustments, and issues of payments or releases. The claims adjuster will follow through with all requests for investigation and adjustment assistance received from defense counsel.

In the event that RMTD elects to expand the role of the claims adjuster, supplemental instructions will be provided.

IX. Compromise/ Settlements

Contract adjusters may be requested to handle claimant settlements, other than bodily injury. Requests for settlement authority should be relayed to your contact person in the Risk Management and Tort Defense Division and approved prior to entering into negotiations in all claims. Settlement offers from the claimant should be promptly communicated to the Risk Management & Tort Defense Division. The division should be kept apprised of the progress and offers and counter-offers being made during a settlement negotiation.

During settlements, when the adjuster has made an offer, a counter-offer should be received before increasing the adjuster's offer. Do not bid against yourself. If they do not immediately make a counter-offer, let them think about it for awhile and keep checking back until they do make another offer.

All claims settled for \$10,000 or more must have District Court approval before they may be settled. RMTD will obtain this approval, and the adjuster should advise the claimant of this because it may take a little extra time. Settlement values are to be negotiated with balanced regard for each of the following:

- Comparative negligence.
- Nature and impact of bodily injuries.
- Medical bills and confirmed income loss directly attributable to the accident.
- Property damages.
- Exposure to plaintiff's attorney fees.
- Witness potential of participants.
- Potential jury verdicts.
- Local political and public relations impact.
- Financial and emotional impact upon the state

Settlement values are NOT to be determined by multiplying the dollar amounts of special damages by any numeric factor. Pre-printed releases may be obtained from RMTD and must be sought in all settlements.

Notarization of releases is required for all claims at the direction of the claims contact. Settlement checks are issued by division accounting staff and must be coordinated through

each respective adjuster's contact.

X. Coverage's and Deductibles

A summary of the state's coverages is provided on the Risk Management & Tort Defense Division's website at

<http://www.discoveringmontana.com/doa/rmtd/css/05insurance/core>. The password to access these files may be obtained by contacting Brett Dahl at (406)444-3687. Questions about whether or not coverage is provided are typically referred to the claims contact.